

1 the subject violations, correct?

2 A We were told that something was
3 being done and we waited and waited and nothing
4 came, so that is when we issued a summons. I forget
5 who I talked to. I think it might have been Mary
6 Beth --

7 Q You really have to speak up we
8 can't hear you.

9 A I spoke to Mary Beth. I think she
10 had intervened at some point and said that the
11 engineer's report was coming and it took too long,
12 so we just issued the summons. Again, we are
13 willing to work with the people.

14 MRS. FIORE: No further questions at
15 this time.

16 MRS. MULLINS: No recross.

17 THE COURT: Do you wish to excuse
18 Mr. Carpaneto?

19 MRS. FIORE: Yes, with the
20 possibility of recalling him.

21 THE COURT: Okay. Call your next
22 witness.

23 MRS. FIORE: We call Anthony Oliveri.

24 THE COURT: I will swear you in.

25 A N T H O N Y O L I V E R I, a witness herein,

1 having been first duly sworn by the Court, was
2 examined and testified as follows:

3 EXAMINATION BY MRS. FIORE:

4 Q Good morning, Mr. Oliveri.

5 A Good morning.

6 Q Mr. Oliveri, could you please state
7 for the record your current place of employment?

8 A Dolph Rotfeld Engineering.

9 Q How long have you been employed by
10 Dolph Rotfeld?

11 A Just about ten years.

12 Q What are you your duties in
13 connection with Dolph Rotfeld?

14 A Project manager.

15 Q What are your duties as the project
16 manager?

17 A I supervise other engineers,
18 technicians for different projects that we have,
19 one of them being the town engineer for the Town of
20 Mamaroneck.

21 Q Are you an engineer yourself?

22 A Yes.

23 Q Do you have a degree in connection
24 with that title?

25 A A Bachelor of Science in Aero Space

1 Engineering Polytec University.

2 Q What year did you receive that
3 degree?

4 A 1989.

5 Q Have you received any other formal
6 education beyond that degree?

7 A No.

8 Q Could you briefly state and
9 summarize your engineering, whether it be
10 employment or of course work or anything of that
11 nature?

12 A After graduating, I worked for a
13 small firm in Eastchester. We did mostly
14 residential work, civil engineering work, some
15 structural work on a residential level. 1997, I
16 went to work for an engineering company where I
17 started as a project engineer and now I'm a
18 manager.

19 In 1995, I received my license in
20 engineering from New York State. I am a licensed
21 professional engineer. I did take some courses in
22 preparation for that.

23 Q What is a licensed engineer
24 qualified to do?

25 A A licensed engineer is qualified to

1 assign and seal certified plans for buildings or
2 any other kind of construction, municipal work, for
3 instance requires professional engineer signature
4 and seal beyond the plans, private work would be a
5 house or something like a retaining wall, where you
6 have to get a building permit, you would need a
7 professional engineer's certification.

8 MRS. FIORE: Your Honor, at this
9 time I move to qualify Mr. Oliveri as an
10 expert in engineering.

11 MRS. MULLINS: Your Honor, with all
12 due respect to Mr. Oliveri, I don't believe
13 that the District Attorney's elicited--

14 MRS. FIORE: Town prosecutor.

15 MRS. MULLINS: Town prosecutor,
16 elicited the appropriate and sufficient
17 information to have him qualified.

18 MRS. FIORE: He is a licensed New
19 York State Engineer.

20 THE COURT: That is correct and I'm
21 not going to second guess The New York
22 State Department of State and I qualify Mr.
23 Oliveri as an expert in engineering as it
24 relates to residential circumstance.

25 MRS. MULLINS: Yes, Your Honor.

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Q Mr. Oliveri, approximately, how many home inspections, if you know, have you performed personally?

A How many inspection, when you say home inspections, that is kind of a different type of thing. Just maybe a site inspection, is that what you mean?

Q Yes, sorry?

A Probably hundreds.

Q Over five hundred?

A I don't know if it's over five hundred, it could be.

Q Over three hundred?

A Probably.

Q And have you performed engineering services for the Town of Mamaroneck prior to this occasion?

A Yes.

Q On how many occasions?

A It is on a continuing basis, we are the town consulting engineers.

Q In connection with your consulting with the Town of Mamaroneck, did you have occasion to visit the premises of 5 Huguenot?

1 A Yes.

2 Q Could you explain to the Court
3 exactly what you did in connection with that?

4 MRS. MULLINS: Could we have a time
5 frame?

6 THE COURT: Yes.

7 A I believe it was October 25th, it
8 was, I believe, the day before I issued my
9 statement, my report. Ron Carpaneto, the building
10 inspector, called and asked me to come and take a
11 look at the wall. I went out and met him. We looked
12 at the wall, measured it, looked at it from both
13 sides actually --

14 Q When you say both sides, what is
15 the other side?

16 A From 2 Lafayette and also from 5
17 Huguenot.

18 Q So you were on both sides of the
19 subject wall; is it fair to say that?

20 A That is right and he asked me to
21 issue a report.

22 Q After you received the call from
23 Mr. Carpaneto, did you go to the premises of 5
24 Huguenot Drive?

25 A Yes.

1 Q Did you observe the wall?

2 A Yes.

3 Q Could you tell the Court what you
4 observed?

5 A What I saw was-- it seemed to be an
6 older stone and water retaining wall, which was
7 approximately fifteen feet high at the highest
8 point, which had a vertical crack about mid span of
9 the wall and it also had some evidence of-- well
10 there were tie back plates on the stone wall, which
11 were severely rusted.

12 Q Excuse me, you said the wall at
13 it's highest height was fifteen feet?

14 A The stone wall, on top of that was
15 the block wall, a concrete block.

16 Q That was the height and how long
17 was the wall?

18 A I did not measure the length.

19 Q Do you recall?

20 A Approximately, I would say forty
21 feet, maybe.

22 Q In length?

23 A Yes, I did not measure it. I only
24 measured the height at one point.

25 Q When you say the top of the wall,

1 that you refer to as concrete block, could you
2 explain what you are referring to?

3 A Approximately five feet of concrete
4 block wall seemed to have been built on top of the
5 stone wall. It did not seem to be original to the
6 wall or built at the same time as the stone wall.
7 The block wall had a number of cracks.

8 It seemed to be leaning slightly
9 outward. You could tell by just the alignments of
10 the wall by looking at it. It also seemed to be
11 overhanging at one point where the stone wall had a
12 slight bend, the block wall was overhanging about
13 three to five inches. I did not measure it. I could
14 not get up to that point but visually you could see
15 the overhang.

16 There were plates, steel plates on
17 the wall, which indicated that there were tie backs
18 at some point installed.

19 Q What is a tie back?

20 A That is something that consists of a
21 steel plate and a steel rod, which is driven
22 through the wall. At the end of the rod it might
23 have a screw type mechanism or something to anchor
24 it into the soil behind the wall.

25 I was not sure really if this was

1 done originally with the construction of the wall
2 or maybe afterwards to stabilize it, you really
3 could not tell. But the wall at some point had
4 moved away from the lower wall and, you know, was
5 leaning slightly.

6 The return part of wall that went
7 perpendicular to the property line had a poured
8 concrete wall, which was straight an true with the
9 stone wall. The concrete block wall had some issues
10 happening.

11 Q You were describing and I
12 interrupted you but you were describing the
13 condition of the tie backs?

14 A The tie backs on the stone wall,
15 the lower wall, were severely rusted even Ron and I
16 were able to chip off little pieces with our
17 fingernails. Those were most likely installed
18 sometime after the crack happened in the lower
19 stone wall.

20 Q Described the crack you are
21 referring to now?

22 A The stone wall about mid span or
23 mid length had a crack, which went from the bottom
24 of the wall to the top of the stone wall where the
25 concrete block wall began.

1 Q It ran the entire length of the
2 stone wall?

3 MRS. MULLINS: Height.

4 Q Yes, it ran the entire height of
5 the stone wall?

6 A Yes and the tie backs seemed to be
7 on either side of the crack and must have been put
8 in to stabilize that crack but they were very
9 rusted and how long they are going to last, I don't
10 know. I think there was some patch material in the
11 crack also, somebody tried to patch this crack.
12 When this was done, the concrete block wall was in
13 place at the time, that is anyone's guess.

14 Q What happens when steel tie backs
15 used to support the wall or crack, were to continue
16 to rust through as you described?

17 A Well, if they were placed there to
18 stabilize the stone wall, if they rusted through,
19 then they have no more structural significance.

20 Q What would the purpose be other
21 than supporting the stone wall?

22 A There would be no other purpose
23 that I know of.

24 Q How many tie backs did you observe
25 on the stone wall?

1 A I don't have a number, it was more
2 than three, maybe four.

3 Q Were they also in the same
4 condition?

5 A It seemed to be.

6 Q Rusted?

7 A Yes.

8 Q What other observations did you
9 make?

10 A On the stone wall or on the entire
11 wall?

12 Q Not the perpendicular wall that you
13 said was straight and true but the retaining wall?

14 A The block wall, like I said, had
15 seemed to move at some point. There was a gap also
16 where the block wall joined the stone wall, there
17 was a gap there.

18 There might have been water in
19 there at some point that washed out when the wall
20 shifted, maybe it fell out. Like I said, there were
21 steel tie back plates, which were large plates and
22 again, I don't know if those were original to the
23 design or installed afterwards to stabilize the
24 wall, I don't know.

25 Q What was the condition of those tie

1 leaning and has an overhang and to me, that is a
2 failed design.

3 MRS. FIORE: Thank you, I have no
4 more questions at this time.

5 THE COURT: Mrs. Mullins, do you have
6 cross examination?

7 MRS. MULLINS: Yes.

8 CROSS EXAMINATION BY MRS. MULLINS:

9 Q Good morning, Mr. Oliveri.

10 A Good morning.

11 Q Do you have any notes from your
12 field visit to the site, any hand-written notes?

13 A I have something, I do have
14 something back at the office, one sheet where I
15 just did a quick sketch.

16 Q Did you take any photographs?

17 A No.

18 Q You testified that you took
19 measurements that day; is that right?

20 A Yes, I took one measurement at the
21 corner of the wall at the highest point to get a
22 sense of the height of the wall and the height of
23 the concrete block.

24 Q Is that the only measurement you
25 took?

1 A Yes.

2 Q In your experience, could you
3 estimate for me the age of the lower stone portion
4 of the wall?

5 A No.

6 Q Could you give us some
7 indication --

8 A I have no idea, it's old, that is
9 all I could say.

10 Q Would you say it's probably
11 original to the construction of the homes there?

12 A I have no idea.

13 Q With regard to the upper block
14 portion, could you give us an estimate that--

15 A The only thing I could say about
16 the age is because it's of different construction,
17 it seems to be done after the stone wall.

18 Q And you testified with regard to
19 the tie back and so that we are all clear, there
20 are two sets of tie back, there are tie backs in
21 the stone portion of the wall and there are tie
22 backs in the upper block portion?

23 A Yes.

24 Q So your testimony is that the tie
25 backs that are in the stone older portion of the

1 wall are rusted?

2 A Right.

3 Q And further it's your testimony
4 that they probably don't have any useful value any
5 longer?

6 MRS. FIORE: Objection.

7 THE COURT: Overruled, could you
8 answer at question.

9 A Yes, there are rusting. They may
10 still have some value. When they fully rust
11 through, then the structural value will be gone.

12 Q What is your opinion as to the
13 structure integrity of the bottom of the wall?

14 A The bottom stone wall seems to be
15 straight. It did not seem to be leaning. The tie
16 backs that were put in may have stabilized, that
17 crack seemed like an old crack and not something
18 new, so, you know, I did not see any immediate
19 problems with the stone part of the wall, it was
20 more concentrated on the concrete of the wall.

21 Q In your opinion, the stone wall
22 bottom portion is it in acceptable condition?

23 A It seemed to appear that way.

24 Q And further you testified that now
25 with regard to the block portion of the wall, five

1 feet you testified that is how high it is, is it
2 five feet continuously through it's length?

3 A It was five feet at the corner that
4 is where I measured it. It might have tapered
5 slightly as it went, maybe it was to the left.

6 Q When you look at it, it tapers down
7 to the left?

8 A Right.

9 Q Is it your testimony that the steel
10 tie backs that were installed in the block portion
11 are in good condition?

12 A They seem to be.

13 Q And you are not sure, are you
14 whether they were installed during the original
15 construction of that block wall or sometime after;
16 is that true?

17 A That is true.

18 Q Is it true that those steel tie
19 backs could have been installed to repair the
20 condition that was apparent to that stone block
21 portion?

22 A They could have been installed to
23 stabilize it.

24 Q Could you describe for the Court
25 how big those steel plates are?

1 A I believe they were at least one
2 foot square plates, how long the rods were, I don't
3 know.

4 Q How many were there, if you recall?

5 A At least two, maybe three or four.

6 Q Normally, the rod that you
7 testified that was attached to that large steel
8 plate, how long are they normally?

9 A It all depends on the design.

10 Q What are they normally designed to
11 do?

12 A To keep the wall from tipping over
13 and this why I said it could be original and it may
14 not be, being that the block wall was built on top
15 of the stone wall, it would have a typical type of
16 footing, they might have put it in originally to
17 keep it from tipping and that is why I can't say
18 either way.

19 MRS. MULLINS: I move to strike as
20 unresponsive.

21 THE COURT: It is not stricken.

22 Q I'm asking you with regard to that
23 rod that is attached, what factors vary on how long
24 those rods are?

25 A The soil conditions and the height

1 of the wall.

2 Q With a five foot wall, how long
3 should that rod be?

4 A To the answer that, it would have
5 to be designed by a professional engineer.

6 Q Such as yourself?

7 A Yes or somebody who specializes in
8 that type of thing.

9 Q The last part of your testimony was
10 with regard to your opinion as to the structural
11 stability of that block portion; is that right?

12 A Yes.

13 Q You testified that there was
14 clearly, in your mind, evidence of movement,
15 although you are not sure when that movement took
16 place; correct?

17 A Yes.

18 Q And that, in your mind, movement
19 means-- well, tell me what does that mean?

20 A In my mind or any engineers mind,
21 if a retaining wall moves, it failed. A retaining
22 wall is not designed to move.

23 Q Is it possible that after your
24 inspection of the wall, that the movement that has
25 occurred in that wall was remedied by the

1 installation of these two signs.

2 A I don't know because I don't know
3 if they were original or not.

4 Q Could you estimate for us when that
5 movement took place?

6 A No.

7 Q Does it appear to you, after your
8 inspection of the premises, that it is a resent
9 event?

10 A No.

11 Q So tell me what is not resent to
12 you, years, more than five years, more than ten?

13 A It's impossible to say, it did not
14 happen last week, it was not fresh.

15 Q Or last month?

16 A Right.

17 Q Mr. Oliveri, after you prepared
18 your written report for the Town of Mamaroneck's
19 Building Department, did you have some
20 recommendations to them with regard to some further
21 action by the town?

22 A We recommended that a structural
23 engineer do a full evaluation of the wall and that
24 also recommended that no vehicle park adjacent to
25 the top of the wall.

1 Q Are you aware that the defendants
2 in this case, the home owners, installed car stops
3 on the upper --

4 A Yeah, I saw them when I was there.

5 Q Did you have any recommendations
6 for the building department with regard to what
7 other measures should be taken with regard to this
8 wall?

9 A No, just that a structural engineer
10 evaluate it.

11 Q Is it your opinion that you are not
12 qualified to give an opinion with regard to the
13 structural integrity of the wall?

14 A No, but in a case like this --

15 MRS. FIORE: No, it's not your
16 opinion or no you are not --

17 THE COURT: You are not objecting, so
18 let the witness answer the question.

19 A It's not my opinion that I'm not
20 qualified any P.E. would be qualified to make a
21 statement about the wall, but we just felt that a
22 structural engineer, somebody that specializes in
23 retaining walls would be better suited to be give a
24 more thorough evaluation and examination.

25 MRS. MULLINS: I have nothing